

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1064 of 1982

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?

4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge? : NO

D S VASAVADA

Versus

CHAIRMAN, GUJARAT ELECTRICITY BOARD

Appearance:

MR DS VASAVADA Petitioner No.1 present in-person
None present for Respondents

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 06/09/1999

ORAL JUDGEMENT

#. During the pendency of the Special Civil Application, the petitioners No.2, 3, 5, 7 and 8 were given promotion on the post of Deputy Engineer and on the request of these petitioners, their names were deleted from this Special Civil Application vide order dated 1.7.82. Now this writ petition is confined only for petitioners No.4, 6, 9 and 10. Mr.Vasavada put appearance and made

submissions on behalf of petitioners No.4, 6, 9 and 10.

#. The petitioners No.4, 6, 9 and 10 are junior engineers of the respondent-Board. By this writ petition, they are challenging the action of the respondent-Board not to give them promotion on the next higher post of Deputy Engineer.

#. It is the grievance of the petitioners that though the juniors were given promotion, the petitioners who were senior have been superseded. It is the case of the petitioners that the criteria for promotion to the post of Deputy Engineer is seniority-cum-merit and unless there are positive demerits, the petitioners should not have been superseded. The juniors have also been impleaded as party to the Special Civil Application.

#. This Special Civil Application has been contested by respondent-Board by filing reply to the Special Civil Application.

#. Mr.Vasavada, the petitioner No.1 raised the very contention that as there were no positive demerits in the case of the petitioners, the action of the respondent-Board not to give promotions to these petitioners is highly unjustified. It has next been contended that even if there are some adverse remarks in some of the annual appraisal performance reports in the case of some of the petitioners, still if the respondent-Board is satisfied that there are no demerits which render them disqualified for next promotion where the criteria for the same is seniority-cum-merits, the petitioners should not have been denied promotion to the next higher post. In support of this contention, he relied on the decision of the Division Bench of this Court in the case of A.N.Memon v. Registrar, High Court of Gujarat & Ors., reported in 1999(2) GLR 1516.

#. Though in this case reply has been filed by respondents, nobody is present on behalf of the respondents to make submissions. Perused the reply filed by respondents.

#. I have given my thoughtful considerations to the submissions made by petitioner No.1

#. So far as the law laid down by the Division Bench of this Court in the case of A.N.Memon v. Registrar, High Court of Gujarat & Ors. (supra) is concerned, there cannot be any dispute thereon. In the case where the criteria for promotion is seniority-cum-merits, even if a

senior has average service record, he has preferential right for promotion. There cannot be an element of comparative merits to be adjudged by the departmental promotion committee where the criteria for promotion is only seniority-cum-merits. However, from the reply to the Special Civil Application, I find that there were adversities in the service record of petitioners No.4, 6, 9 and 10. The details of these adversities have been given in annexure-2 enclosed to the reply at page No.54 and 55.

Against the petitioner No.4 it is stated as under:

- (i) A.R. in the C.R. for the year 1979
- (ii) Appeal under process
- (iii) A.R. in the C.R. for the year 1978 (period from 1.4.78 to 31.12.78)
- (iv) Appeal against the adverse remarks of the C.R. for the year 1979

* Appeal rejected

Against the petitioner No.6 it is stated as under:

- (i) A.R. in the C.R. for the year 1978
- (ii) A.R. in the C.R. for the year 1979
- (iii) A.R. in the C.R. for the period from 1.4.78 to 31.12.78
- (iv) Appeal against the adverse remarks of C.R. for the year 1979

* Appeal rejected

Against the petitioner No.9, it is stated as under:

- (i) Warning memo
- (ii) A.R. in the C.R. for the year 1979

Against the petitioner No.10, it is stated as under:

- (i) A.R. in the C.R. for the year 1979
- (ii) Appeal against A.R. in the C.R. for the year 1979

* Appeal rejected

#. So far as petitioner No.4 is concerned, there is adverse remarks communicated to him in his confidential report for the year 1979 and the same has been challenged

by him by filing appeal. As per reply to the Special Civil Application of the respondent, on the date of filing thereof, the appeal was under process. The petitioner No.1 is not in a position to state what ultimately happened in that appeal. In case the appeal would have been decided in favour of petitioner No.4, this fact would have been stated either by filing additional affidavit or during the course of arguments. The very fact of non disclosing of this information which is very important and relevant goes to show that the appeal of petitioner No.4 would have been decided against him. Otherwise also, in the C.R. of the petitioner No.4 of the year 1978, there were adverse remarks against which appeal has been filed and that appeal has been dismissed.

##. In the case of petitioner No.6, there were adverse remarks in the C.R. for the year 1978 and appeal filed by him against the C.R. for the year 1979 has already been rejected.

##. In the case of petitioner No.9, in his C.R. of the year 1979, there is adverse remarks and that appears not to have been challenged by him.

##. In the case of petitioner No.10, adverse remarks are there in the C.R. for the year 1979 and appeal against which has been filed and the same has been rejected.

##. Taking into consideration the totality of the facts of the case and the adversities which have been shown by the respondents in the reply to the Special Civil Application, it cannot be said that the departmental promotion committee, or the selection committee, as the case may be, has committed any illegality in adjudging these petitioners unfit for promotion to the post of Deputy Engineer.

##. The petitioner No.1 submits that during the pendency of this Special Civil Application, these petitioners have already been given promotion and now they are restricting their claim for giving them deemed date of promotion only.

##. The criteria of seniority-cum-merits does not mean that even if there are adversities in the service record of the officer concerned still he has to be given promotion. Taking into consideration the totality of the facts of the case, I do not find any merits in the Special Civil Application and the same is dismissed. Rule discharged. No order as to costs.

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[sunil]